

SECOND REGULAR SESSION  
HOUSE COMMITTEE SUBSTITUTE FOR  
**SENATE BILL NO. 788**  
**90TH GENERAL ASSEMBLY**

Reported from the Committee on Governmental Organization and Review, April 13, 2000, with recommendation that the House Committee Substitute for Senate Bill No. 788 Do Pass.

ANNE C. WALKER, Chief Clerk

3148L.07C

**AN ACT**

To repeal section 105.055, RSMo 1994, and section 105.058, RSMo Supp. 1999, relating to whistleblower protections for employees, and to enact in lieu thereof three new sections relating to the same subject, with an effective date for a certain section.

*Be it enacted by the General Assembly of the state of Missouri, as follows:*

Section A. Section 105.055, RSMo 1994, and section 105.058, RSMo Supp. 1999, are repealed and three new sections enacted in lieu thereof, to be known as sections 105.055, 105.058 and 197.285, to read as follows:

105.055. 1. No supervisor or appointing authority of any state agency shall prohibit any employee of the agency from discussing the operations of the agency, either specifically or generally, with any member of the legislature or the state auditor.

2. No supervisor or appointing authority of any state agency shall:

(1) Prohibit a state employee from or take any disciplinary action whatsoever against a state employee for the disclosure of any alleged prohibited activity under investigation or any related activity, or for the disclosure of information which the employee reasonably believes evidences:

(a) A violation of any law, rule or regulation; or

(b) Mismanagement, a gross waste of funds or abuse of authority, or a substantial and specific danger to public health or safety, if the disclosure is not specifically prohibited by law; or

(2) Require any such employee to give notice to the supervisor or appointing authority prior to making any such report.

3. This section shall not be construed as:

(1) Prohibiting a supervisor or appointing authority from requiring that an employee inform the supervisor or appointing authority as to legislative requests for information to the agency or the substance of testimony made, or to be made, by the employee to legislators on behalf of the employee to legislators on behalf of the agency;

**EXPLANATION — Matter enclosed in bold faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.**

(2) Permitting an employee to leave the employee's assigned work areas during normal work hours without following applicable rules and regulations and policies pertaining to leaves, unless the employee is requested by a legislator or legislative committee to appear before a legislative committee;

(3) Authorizing an employee to represent the employee's personal opinions as the opinions of a state agency; or

(4) Restricting or precluding disciplinary action taken against a state employee if: the employee [knows the disclosure to be false or which the employee discloses with reckless disregard for its truth or falsity] **knew that the information was false**; the information is closed or is confidential under the provisions of the open meetings law or any other law; or the disclosure relates to the employee's own violations, mismanagement, gross waste of funds, abuse of authority or endangerment of the public health or safety.

4. As used in this section, "disciplinary action" means any dismissal, demotion, transfer, reassignment, suspension, reprimand, warning of possible dismissal or withholding of work, whether or not the withholding of work has affected or will affect the employee's compensation.

5. Any employee may file an administrative appeal whenever the employee alleges that disciplinary action was taken against the employee in violation of this section. The appeal shall be filed with the state personnel advisory board; provided that the appeal shall be filed with the appropriate agency review board or body of nonmerit agency employers which have established appeal procedures substantially similar to those provided for merit employees in subsection 5 of section 36.390, RSMo. The appeal shall be filed within thirty days of the alleged disciplinary action. Procedures governing the appeal shall be in accordance with chapter 36, RSMo. If the board or appropriate review body finds that disciplinary action taken was unreasonable, the board or appropriate review body shall modify or reverse the agency's action and order such relief for the employee as the board considers appropriate. If the board finds a violation of this section, it may review and recommend to the appointing authority that the violator be suspended on leave without pay for not more than thirty days or, in cases of willful or repeated violations, may review and recommend to the appointing authority that the violator forfeit the violator's position as a state officer or employee and disqualify the violator for appointment to or employment as a state officer or employee for a period of not more than two years. The decision of the board or appropriate review body in such cases may be appealed by any party pursuant to law.

6. Each state agency shall prominently post a copy of this section in locations where it can reasonably be expected to come to the attention of all employees of the agency.

105.058. No state agency and no state official, including the joint committee on legislative research and the oversight division, shall, by agency policy, executive order, ethics codes or any other means, prohibit any state employee from communicating with **the state auditor or** his or her state representative or state senator, nor shall such agency or official require any such employee to provide any record or other information regarding any communications with **the state auditor or** his or her state representative or state senator, except when such communications are directly related to the primary employment duties of such employee.

**197.285. 1. Hospitals and ambulatory surgical centers shall establish and implement a written policy relating to the protections for employees who disclose information pursuant to subsection 2 of this section. At a minimum, such policy shall include the following provisions:**

**(1) No supervisor, or individual with authority to hire or fire in a hospital or ambulatory surgical center shall prohibit employees from disclosing information pursuant to subsection 2 of this section; and**

**(2) No supervisor, or individual with authority to hire or fire in a hospital or ambulatory surgical center shall use or threaten to use his or her supervisory authority to knowingly discriminate against, dismiss, penalize or in any way retaliate against or harass an employee because the employee in good faith reported or disclosed any information pursuant to subsection 2 of this section, or in any way attempt to dissuade, prevent or interfere with an employee who wishes to report or disclose such information.**

**2. This section shall apply to information disclosed or reported in good faith by an employee concerning:**

- (1) Alleged facility mismanagement or fraudulent activity;**
- (2) Alleged violations of applicable federal or state laws or administrative rules concerning patient care, patient safety or facility safety; or**
- (3) The ability of employees to successfully perform their assigned duties.**

**All information disclosed pursuant to this subsection to a corporate compliance program shall be collected, maintained and accessible to the department of health at all times and shall be reviewed by the department of health at least annually. Complainants shall be notified of the department of health's access to such information.**

**3. Prior to any disclosure to individuals or agencies other than the department of health, employees wishing to make a disclosure pursuant to the provisions of this section shall first report to the individual or individuals designated by the hospital or ambulatory surgical center pursuant to subsection 4 of this section.**

**4. Each hospital and ambulatory surgical center shall have a corporate compliance program that meets the reporting of complaint standards established by the Office of Inspector General of the federal Department of Health and Human Services for such programs. Such complaint standards shall include, but not be limited to information reported or disclosed pursuant to subsection 2 of this section. The corporate compliance program adopted by each hospital and ambulatory surgical center shall include a time frame for completion of investigations related to complaints, not to exceed thirty days, and a method for notifying the complainant of the disposition of the investigation. All corporate compliance programs shall also identify a designated person responsible for administering the reporting and investigation process and an alternate person should the primary designee be implicated in the report. The department of health shall review such corporate compliance programs to verify their implementation and to verify that they meet the standards set out in this section. Each hospital and ambulatory surgical center shall report incidents involving violations or misconduct in accordance with Part 2 of Section G of the Office of Inspector General's Compliance Program Guidance for Hospitals as published in the Federal Register of February 23, 1998 (8987-8998), as amended, including:**

**(1) If the compliance officer, compliance committee or management official discovers credible evidence of misconduct from any source and, after a reasonable inquiry, has reason to believe that the misconduct may violate criminal, civil or administrative law, then the hospital or ambulatory surgical center shall promptly report the existence of misconduct to the appropriate**

governmental authority within a reasonable period, but not more than sixty days after determining that there is credible evidence of a violation. Prompt reporting will demonstrate the hospital's or ambulatory surgical center's good faith and willingness to work with governmental authorities to correct and remedy the problem. In addition, reporting such conduct will be considered a mitigating factor by the Office of Inspector General in determining administrative sanctions, such as penalties, assessments, and exclusion, if the reporting provider becomes the target of an OIG investigation; and

(2) When reporting misconduct to the government, a hospital or ambulatory surgical center shall provide all evidence relevant to the alleged violation of applicable federal or state laws and potential cost impact. The compliance officer, under advice of counsel, and with guidance from the governmental authorities, may be requested to continue to investigate the reported violation. Once the investigation is completed, the compliance officer shall notify the appropriate governmental authority of the outcome of the investigation, including a description of the impact of the alleged violation on the operation of the applicable health care programs or their beneficiaries. If the investigation ultimately reveals that criminal or civil violations have occurred, the appropriate federal and state officials shall be notified immediately.

Reports made to the department of health shall be subject to the provisions of section 197.477; provided that the restrictions of section 197.477 shall not be construed to limit the employee's ability to subpoena from the original source the information reported to the department pursuant to this section.

5. Each corporate compliance plan shall allow employees making a report who wish to remain anonymous to do so, and shall include safeguards to protect the confidentiality of the employee making the report, the confidentiality of patients and the integrity of data, information and medical records.

6. Each hospital and ambulatory surgical center shall, within forty-eight hours of the receipt of a report, notify the employee that his or her report has been received and is being reviewed.

Section B. Section 197.285 of section A of this act shall become effective January 1, 2001.